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**From:**

**Sent:** Tuesday, June 02, 2009 11:50 AM

**To:**

**Cc:**

**Subject:** RE: Need Legal Advice- Info for Another Case- Promoter Tax Shelter case

Hello

Under 6103(h)(1), IRS employees can have access to any returns and return information that they "need to know" to perform their official tax administration duties. Need to know means reasonably necessary to do the job correctly, efficiently, economically. It does not require a "cannot function without it" level of need. If the exam teams here perceive that they are working on similar types of shelters, or similar issues, then they can share with each other material that will help each team to better understand the transaction (including who is involved).

It is vitally important that each exam team label everything they receive from the other team as the third party return information of the other team's taxpayer (or whichever other taxpayer the return information actually belongs to). In the event of a FOIA request, a 6103(e) request, or a discovery demand by either taxpayer, we must be able to identify what information is the return information of that taxpayer and what is third party return information (and who is the third party taxpayer). The situation described below sounds like much (maybe all) of what will be exchanged is for training and information purposes, not directly for determining liability. As such, it is unlikely that any of it could be disclosed to the recipient exam team's taxpayer (comparables are not disclosable to taxpayers).

You might want to check out the "Disclosure Litigation Training Reference" on the Counsel Website. It's part of the [FOIA](#) tab, under Reference Tools/Training Texts. This is a few years old, but the basic law hasn't changed.

Hope this helps. If you have further questions, please feel free to contact me.